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SEP
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In re Application of)
POHLMANN)
Application No. 08/916,106)
Filed: August 21, 1997)
For: Arrangement for Determining the Penetration Depth)
on Putting in Place Supporting Elements into a Water Bed)
DECISION ON PETITION.

This is a decision on the petition, filed May 2, 2001, to withdraw the holding of abandonment of Application No. 08/306,204, filed on May 6, 1999, which petition is being treated as a petition to withdraw the holding of abandonment of Application No. 08/916,106.¹

The petition is **DISMISSED**.

This application was held abandoned for failure to timely file new formal drawings as required in the Notice of Allowability mailed on September 13, 1999. A Notice of Abandonment was mailed on May 25, 2000.

Petitioner asserts that formal drawings were timely filed on October 4, 1999. To support this assertion, petitioner has submitted a copy of a postcard receipt which bears an Office Date stamp of October 8, 1999, and a copy of a transmittal form for formal drawings which bears a Certificate of Mailing dated October 4, 1999.

The formal drawings submitted on October 8, 1999 are not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is

¹Application No. 08/306,204 neither is abandoned nor was filed on May 6, 1999. While Application No. 09/306,204 was filed on May 6, 1999, it is not abandoned. Application No. 09/306,204 is a division of Application No. 08/916,106, filed on August 21, 1997, which application is abandoned for failure to file new formal drawings. Accordingly, it is presumed that the petition is directed to the last mentioned application.

concluded that formal drawings were received in the PTO on October 8, 1999 but lost after receipt thereof.

However, the postcard receipt listing formal drawings for "Ser. No. 08/916,106" also refers to "Docket # 701." According to PTO records, applicant used "Docket No. 701" to refer to Appl. No. 09/306,204 and not to Appl. No. 08/916,106. Furthermore, the copy of the transmittal form references "Serial No. 09/306,204, filed May 6, 1999," and nowhere indicates formal drawings intended for Appl. No. 08/916,106, filed August 21, 1997. An inspection of PTO records² indicates that a Notice of Allowance for Appl. No. 09/306,204 was mailed on September 14, 1999. Accordingly, it is not clear from the record that the formal drawings filed on October 8, 1999 were intended for Application No. 08/916,106 and not for Application No. 09/306,204.

For the above stated reasons, the showing of record fails to establish that formal drawings intended for Application No. 08/916,106 were timely filed on October 4, 1999. Since the petitioner has not made the requisite showing, the petition is dismissed.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mailing date of this decision.



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² The application file for Appl. No. 09/306,204 is not currently available.